

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KEVIN M. GIBBONS,

Petitioner,

v.

Case No. 08-CV-11354

HUGH WOLFENBARGER,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION TO SUPPLEMENT HIS HABEAS
PETITION AND DIRECTING RESPONDENT TO FILE CERTAIN RULE 5 MATERIALS
AND TO ADDRESS PETITIONER'S ARGUMENT**

Petitioner Kevin M. Gibbons has filed a *pro se* application for the writ of habeas corpus under 28 U.S.C. § 2254 and a motion to supplement his habeas petition. Also pending before the court is Respondent's motion to dismiss the habeas petition on the ground that Petitioner failed to comply with the statute of limitations.

Petitioner's motion to supplement his habeas petition seeks to add facts and legal analysis to habeas claims III through VII and X, which allege that Petitioner is actually innocent of the crimes for which he was convicted and that he was deprived of the effective assistance of trial counsel. (Pl.'s Mot. at 2.) The court may permit a party to serve a supplemental pleading even if the original pleading is defective in stating a claim or defense. Fed. R. Civ. P. 15(d). Accordingly,

IT IS ORDERED that Petitioner's motion to supplement his habeas corpus petition [Dkt. # 8] is GRANTED.

IT IS FURTHER ORDERED that Respondent shall file a copy of the trial court's

docket sheet and the relevant state court appellate materials in accordance with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts.

Finally, IT IS ORDERED that Respondent shall supplement his motion to dismiss by addressing Petitioner's contention that his motion for re-sentencing tolled the limitations period. Respondent's supplemental argument and the Rule 5 materials mentioned in the previous paragraph shall be due on or before **March 9, 2009**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 17, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 17, 2009, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522